

**GREEN SHEET REDIGEST**

**HB 66**

**2020 First Extraordinary Session**

**Nelson**

**CIVIL/ACTIONS: Enacts the Citizens' Premium Reduction Act (Item #40)**

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DIGEST

**Comparative Fault**

Present law (C.C. Art. 2323) provides that in an action for damages, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined. Further provides that if a person suffers an injury, death, or loss partly as the result of his own negligence, the amount of damages recoverable shall be reduced in proportion to the percentage of negligence attributable to that person. Further provides that a person's claim for recovery shall not be reduced in proportion to his own negligence if the injury, death, or loss is partly the result of an intentional act.

Proposed law retains present law and adds that a person suffering injury, death, or loss shall be barred from recovering damages if his percentage of fault is greater than the combined percentage of fault of all other persons found to have contributed to the injury, death, or loss.

**Prescription**

Present law provides a general one-year liberative prescriptive period for delictual actions (C.C. Art. 3492), and a two-year period for delictual actions for damages arising from an act defined as a crime of violence, except for any act of sexual assault which is subject to a liberative prescription of three years. (C.C. Art. 3493.10).

Proposed law increases the general one-year prescriptive period for delictual actions for injury or damages arising from the operation of any motor vehicle, aircraft, watercraft, or other means of conveyance to a two-year prescriptive period and retains the liberative prescription of two years for a crime of violence and three years for any act of sexual assault.

**Jury Trials**

Present law (C.C.P. Art. 1732) authorizes a jury trial when the amount in controversy exceeds \$50,000.

Proposed law reduces the threshold for a jury trial to \$10,000.

Present law provides that when a principal demand is commenced in a parish or city court in which the defendant would otherwise be entitled to trial by jury, the defendant may obtain a jury trial by transferring the action to the district court in the manner provided by present law (C.C.P. Art. 4873).

Proposed law retains present law and provides that if a party fails to file a motion to transfer within the delays provided by present law, the matter shall not be transferred.

Proposed law further provides that a jury trial shall not be available for nontort suits originally filed in parish or city court when the amount in controversy does not exceed the parish or city court's jurisdictional limit.

Present law (C.C.P. Art. 1761) provides that in civil cases to be tried by a jury, 12 jurors shall be chosen to try issues of the case, unless the parties stipulate that the case shall be tried by six jurors.

Proposed law instead provides that six jurors shall be chosen to try issues of the case, unless a party requests that the case shall be tried by 12 jurors.

Present law (C.C.P. Art. 1733) provides that a party may request a jury trial by filing a pleading to that effect. Present law (C.C.P. Arts. 1734 and 1734.1) further provides that when a case is set for trial, the court shall fix the amount of the bond, or a deposit, to cover all costs related to the trial by jury.

Proposed law retains present law and provides that the party requesting an increase in the number of jurors from six to 12 shall be responsible for half of the total jury bond or deposit.

### **Evidence of Liability Insurance**

Present law (C.E. Art. 411) provides that a policy of insurance may be admissible as evidence, but the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide.

Proposed law provides that evidence that a person was or was not insured against liability shall not be admissible to prove whether the person acted negligently or otherwise wrongfully. However, such evidence may be admissible for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Present law (R.S. 22:1269(B)) provides relative to direct action against a liability insurer and provides that an injured third party has the right to take direct legal action against the insurer in certain circumstances.

Proposed law retains present law and adds that the caption of any direct action against the insurer shall not include the name of or reference to an insurer.

Proposed law further provides that in a direct action against the insurer, only the court may receive evidence of the insurance contract between the insurer and the insured for the purpose of establishing the right of direct action.

### **Insurance Rating Risk Criteria**

When setting insurance rates, present law authorizes classification of risk using any criteria except that no risk shall be classified on the basis of race, color, creed, or national origin.

Proposed law retains present law and further prohibits risk classifications made on the basis of gender of an insured over the age of 25.

### **Collateral Source**

Proposed law (R.S. 9:2800.27) provides that amounts written down or discounted from billed medical expenses shall not be considered a benefit from a collateral source and shall not be recoverable as damages. Recovery for past medical expenses shall be limited to amounts actually paid or required to be paid to a health care provider, and not the amount billed.

Proposed law further provides that any party receiving a discount or write-down to billed medical expenses as a result of an insurance contract may be reimbursed for the premiums paid by the party or their immediate family to obtain such insurance from the date of injury through the duration of treatment or one year, whichever is less. Such premiums may be introduced into evidence for this purpose. However, any recovery for past premiums shall not exceed the amount written down or discounted from billed medical expenses as a result of the insurance contract.

Proposed law further provides that evidence of future medical expenses not yet incurred at the time of trial can be presented to the jury.

### **Department of Insurance**

Proposed law requires the commissioner of insurance to report to the legislature on April first of each year through 2024, the rate change of the statewide average private passenger automobile written premium for minimum limits from April first of the prior year.

## Effectiveness

Effective Jan. 1, 2021.

Proposed law provides for restoration of prior law on Aug. 1, 2024, if no report required to be submitted by the commissioner of insurance pursuant to proposed law on or before April 1, 2024, reflects that the statewide average private passenger automobile written premium for minimum limits decreased by at least 15%, adjusted for inflation, compared to such premiums on Jan. 1, 2020.

(Amends C.C. Arts. 2492 and 3493.10, C.C.P. Arts. 1732, 1761(A) and 4871(1), C.E. Art. 411, and R.S. 22:1454(A); adds C.C. Art. 2323(D), C.C.P. Art. 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4); repeals C.C. Art. 2323(D), C.C.P. Art. 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4))

### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide a \$35,000 jury trial threshold for nontort actions.
2. Specify that a party may only recover past medical expenses if they are paid to a health care provider.
3. Prohibit insurance policy risk classifications made on the basis of gender of an insured over the age of 25.
4. Require the commissioner of insurance to annually report the rate change of certain automobile insurance premiums to the legislature.

### Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Provides for increasing the general one-year prescriptive period for delictual actions for injury or damages arising from the operation of any motor vehicle, aircraft, watercraft, or other means of conveyance to a two-year prescriptive period and retains the liberative prescription of three years for any act of sexual assault.
2. Provides relative to jury trials, including a \$10,000 jury trial threshold for delictual or quasi-delictual actions and that when a principal demand is commenced in a parish or city court in which the defendant would otherwise be entitled to trial by jury, the defendant may obtain a jury trial by transferring the action to the district court in the manner provided by present law (C.C.P. Art. 4873).
3. Provides relative collateral source including that evidence of future medical expenses not yet incurred at the time of trial can be presented to the jury.
4. Changes the effective dates from Aug. 1, 2020, to Jan. 1, 2021 and from Aug. 1, 2023, to August 1, 2024.